

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (SZ), SITTING  
AT CHENNAI  
MEMORANDUM OF APPEAL  
(Under Section 18(1) R/W Section 16(j) of the National Green  
Tribunal Act, 2010)  
APPEAL NO. 65 OF 2024 (SZ)**

BETWEEN:

**INVENTPRISE INC.**

18133 NE 68<sup>th</sup> Street, d150, Redmond,  
Washington- 98052, USA  
Email: [taaurs@gmail.com](mailto:taaurs@gmail.com)

...**APPELLANT**

AND

**1. UNION OF INDIA THROUGH SECRETARY,  
MINISTRY OF ENVIRONMENT,  
FOREST AND CLIMATE CHANGE**

Indira Paryavaran Bhawan,  
Jorbagh Road,  
New Delhi- 110003  
Email: [anuragcgsc@gmail.com](mailto:anuragcgsc@gmail.com)

**2. NATIONAL BIODIVERSITY AUTHORITY**

Represented by Secretary, National Biodiversity Authority,  
5<sup>th</sup> Floor, TICEL Bio Park,  
CSIR Road, Taramani,  
Chennai- 600113  
Email: [secretary@nba.nic.in](mailto:secretary@nba.nic.in)

...**RESPONDENTS**

**REJOINDER AFFIDAVIT FILED ON BEHALF OF THE APPELLANT**

I, Praneet Singh Davar, S/o Late Sh. Gautam Singh Davar, Authorised Representative of Inventprise INC, aged about 51 years, R/o A-1, Greater Kailash, New Delhi- 110048, do hereby solemnly affirm and state on oath as under:



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1. That I am the Authorised Representative of the Appellant in the present matter and as such am well acquainted with the facts and circumstances of the case and thus am duly competent to swear the present affidavit.
2. The present Appeal has been filed on behalf of the Appellant under Section 18(1) r/w Section 16(j) of the National Green Tribunal Act, 2010, challenging the order of Respondent No.2 dated 09.03.2024. The Appellant is aggrieved by the various acts of omission and commission at the hands of the Respondents who are acting without jurisdiction and contrary to Principles of Natural Justice.
3. The contents of the accompanying appeal are not being reproduced herein for the sake of brevity, however, the same are reiterated and relied upon. At the very outset it is submitted that the contents of the Reply filed by the Respondents is denied, in entirety, unless specifically admitted to herein. The Appellant craves leave of this Hon'ble Court to make the following preliminary submissions.

4. **PRELIMINARY SUBMISSIONS:**

- A. The Respondents have failed to appreciate the facts and circumstances including statutory provisions governing the invention titled "**Heat Stable Liquid Rotavirus Vaccine**", based on PCT/US2018/018226 (vide Indian Patent Application No.



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201917035818 dated 05.09.2019), which is presently a granted Patent No. 491743 on 29.12.2023.

- B. The Impugned Order passed by Respondent No.2 is *per se* erroneous, arbitrary, illegal and is void *ab initio* since the Respondent does not have any jurisdiction in the present matter. Respondent No.2 has acted in an arbitrary manner by *suo moto* raising a requirement of its approval for the present invention, i.e., Indian Patent Application No. 201917035818 dated 05.09.2019 which is presently a granted patent. It is pertinent to note that the Indian Patent Office has not raised any such objection through the entire prosecution of the subject patent application and since a patent stands granted the Respondent in any case does not have any jurisdiction in the matter.
- C. The Rotavirus strain 116E used in the present invention is not a biological resource. The said virus has to be extracted from the host by human intervention and thus by virtue this very process it becomes a value added product, thus standing exempt from the provisions of the BD Act cited by Respondent No.2. The present invention does not use the virus in its naturally occurring form *per se* and the act of isolation of the virus, by human invention, renders it liable to Section 2(c) read with Section 2(p) of the BD Act. The relevant provisions are:

- a. "2(c). "biological resources" means plants, animals and microorganisms or parts thereof, their genetic material and by-



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*products (excluding value added products) with actual or potential use or value, but does not include human genetic material”;*

*b. 2(p). “value added products” means products which may contain portions or extracts of plants and animals in unrecognizable and physically inseparable form.”.*

D. Since the Rotavirus strain used in the present invention is in an unrecognisable and physically inseparable form it is clearly a value added product. In any case, it is humbly submitted that no one can claim exclusive rights over a virus, especially one that is freely globally available.

E. The Rotavirus strain used in the subject invention is a reassortant strain containing a single bovine gene segment (VP4) in a human background and has been successfully used which clearly evidences that this particular strain of Rotavirus should not come under the purview of ‘biological resource’ as it is clearly a ‘value added product’ and thus does not require any approval by Respondent No.2.

F. That even the PCT application bearing No. PCT/US2018/018226, governing Patent No. 491743 (Patent Application No. 201917035818) contains no reference whatsoever to the subject Rotavirus strain 116E in the respective claims. Similarly, corresponding granted patents in the USA (US 10,413,604 and US 11,110,163), Indonesia (IDP000078510), in Malaysia (MY-191286-A) do not recite the use of the Rotavirus strain 116E in their respective claims. The Respondents



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have failed to consider that in the facts and circumstances of the present invention it is exempt from requiring any approval under the provisions of the BD Act and the Appellant is being wrongly coerced by Respondent No.2 which in fact has no jurisdiction to act in this matter.

G. The particular strain of Rotavirus used in the subject invention has been procured by the Appellant from Bharat Biotech International Limited, i.e., a commercial vendor, as a processed off-the-shelf product and not a naturally occurring material *per se* and is a commonly available material. Thus, even at the time of procurement of the said strain by the Appellant the Rotavirus 116E was a value added product, having been extracted from the host, and thus the Appellant was not liable to seek any approval from Respondent No.2. Thus, at no point in time has the Appellant accessed biological resource for use in the present invention.

H. It is important to note that the particular strain of Rotavirus at issue was used in an experiment that was disclosed in the subject application which was later granted as a patent. As is stated in the granted patent, the strain of Rotavirus "was used as a model," in other words, representative of all strains of Rotavirus. The experiment was performed at Appellant's headquarters in Redmond, Washington, USA and the strain was provided to the Appellant under license from Bharat Biotech International Limited, with no conditions



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related to Respondent. The Appellant's granted patent makes no claim of ownership to the particular strain of Rotavirus, nor is the particular strain of Rotavirus necessary or at all related to the practice of the Appellant's patented invention. The Appellant used the strain in the experiment because it was convenient, nothing more, and any strain of Rotavirus could have been used in that experiment.

I. The Rotavirus strain used in the present invention is commercial / intellectual property of BBIL which is sold or licenced worldwide under the brand ROTAVAC and is not a natural product of India as claimed by Respondent No.2. In this connection you may refer to the US Patent 10,413,604 wherein in column 1 paragraph 4 it is clearly mentioned that Since 2006 three oral live attenuated rotavirus vaccines —ROTATEQ from Merck, ROTARIX from Glaxo Smith Kline, and ROTAVAC from Bharat Biotech became available in the market to help preventing severe rotavirus infections. Similarly, the other corresponding applications also have the same disclosure. Thus, the vaccine of the present invention is just an improved version that overcomes the problems and disadvantages associated with the previous vaccines.

J. Respondent No.2 has clearly exceeded jurisdiction in wrongly requiring the Appellant to execute the ABS Agreements whereas the subject invention is clearly exempt from requiring any such



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approvals. It is settled law that where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, *non est* and *void ab initio*. That a decree passed by a court without jurisdiction on the subject-matter or on the grounds on which the decree made which goes to the root of its jurisdiction or lacks inherent jurisdiction is a *coram non jndice*. The principles of natural justice have clearly been violated in the facts and circumstances of the present matter where Respondent No.2 has acted without jurisdiction.

K. Considering the aforesaid facts and circumstances, the Hon'ble Court of Delhi was pleased to pass order dated 20.12.2023 in W.P.(C)-IPD 26/2023, titled "***Inventprise, Inc Vs. The Controller Of Patents & Anr.***", wherein it was directed as under, while leaving all remedies open to the Appellant:

- a. "10. Accordingly, this Court is of the opinion that the question as to whether the subject matter of the patent relates to biological resource and comes within Section 2(c) of the Biological Diversity Act, 2002 or not, would have to be firstly decided by the NBA. For the said purpose, let the Petitioner be given notice of hearing in the matter by the Expert Committee of the NBA.
- b. 12. This is also significant considering that in the examination report issued by the patent office, no objection under Section 3(j) of the Patent Act, 1970 has been raised by the Patent Office, which would show that the Patent Office was not of the opinion that the subject matter of the patent is either a plant, animal or any part thereof."



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- L. It is pertinent to note the conduct of Respondent No.2 has been completely violative of the principles of Natural Justice and the same is apparent from the fact that it was only after directions were passed by the Hon'ble Delhi High Court that the Respondent granted an opportunity of a hearing to the Appellant.
- M. That post the aforesaid order passed by the Hon'ble High Court of Delhi, inspite of the fact that the Indian Patent Office proceeded to grant the Appellant a patent, the Expert Committee constituted by Respondent No.2 has passed the Impugned Order maintaining its objection that the Appellant be held to be in contravention of Section 3 and Section 6 of the said Act and the Appellant was directed to file Form-I application for the biological resource and take prior approval of Respondent No.2 for accessing biological material.
- N. It is submitted that the absence of a single window clearance for such matters, the Appellant has been made to run from pillar to post between two separate entities, i.e., the Patent Office, who has in fact never raised an objection under Section 3(j) of the Patent Act, 1970 and in fact has granted the subject patent; and Respondent No.2 both entities having taken contrary stances in the present matter.
- O. The Appellant approached the Hon'ble High Court of Delhi *vide* Writ Petition (Civil) IPD No. 23/2024 seeking consequential and similar reliefs. However, the said Writ Petition was dismissed as withdrawn



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vide Order dated 12.08.2024 with liberty to file an appeal before this Hon'ble Tribunal. The Hon'ble High Court of Delhi have directed that in the event the Appellant herein prefers to file an appeal within two weeks from the Order dated 12.08.2024, the same shall be considered uninfluenced by the question of delay. Thus, it is submitted that the Respondents averments regarding maintainability of the present appeal on ground of delay is misplaced and erroneous. The relevant extract of the Order dated 12.08.2024 are provided below for ease of reference:

*"2. Mr. Hairsh Vaidyanathan, learned counsel appearing for the respondents states that the present petition is not maintainable as the order dated 09.03.2024 is an appealable order under Section 52A of the Biological Diversity Act, 2002.*

*3. In view of the above, Mr. Makhija, learned senior counsel appearing for the petitioner seeks to withdraw the present petition with liberty to avail of the appellate remedy.*

*4. The present petition as well as the pending application are dismissed as withdrawn with the liberty aforesaid. In the event the petitioner prefers an appeal within a period of two weeks from date, the same shall be considered by the Appellate Authority (National Green Tribunal) uninfluenced by the question of delay."*

P. Respondent No.2 is acting wholly without jurisdiction in an erroneous and arbitrary manner which is contrary to the principles of natural justice. The Appellant is in fact not governed by the jurisdiction of Respondent No.2.



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- Q. The Appellant is aggrieved by the unwarranted acts of Respondent No.2 insofar as that even post grant of Patent application on 29.12.2023 by the Indian Patent Office, Respondent No.2 is raising objections whereas it does not even have jurisdiction in the matter. The Patent Office has not raised any objections that require an approval from Respondent No. 2 which has, *suo moto*, without any jurisdiction, is coercing the Appellant to obtain an approval from it.
- R. The appellant also submits that the Office Circular (CG/Office Circular (P)/2017/451) dated 23.05.2017, issued by the Ld. CGPDTM that an approval from Respondent No.2 is not required for applications where the invention does not relate to "*Biological Resource*" as defined under Section 2(c) of the BD Act, was in fact intended to facilitate and ease the process for applicants filing patents in India.
- S. It is also most humbly submitted that the stance being taken by Respondent No. 2 does not bode well for the pharmaceutical and biotechnology industry in general since such an erroneous, rigid and archaic approach will be a detriment to the industry and may deter applicants from research and development of products and filing patents in relation thereto in India.
- T. The present vaccination is in fact the outcome of the joint collaboration between the Applicant and the Bill Gates Foundation and such efforts are of immense national significance since they are



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directed towards treatment of diarrhoea in infants. The present patent is in fact unique inter alia since the present vaccine can be stored at higher temperatures as compared to other vaccine available in the market, without any loss of efficacy, which is a crucial aspect in rural India where facilities of refrigeration may not be available or rural areas where there is no continuous source of electricity to maintain the lower temperatures required for other vaccines used for treatment of the Rotavirus related ailments in newborns and infants.

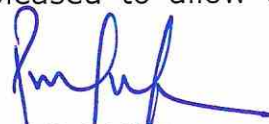
U. It is also most humbly submitted by the Appellant that the present invention has not been commercially used, till date, in India or in any other jurisdiction.

5. That no new facts or documents have been pleaded in the present Rejoinder affidavit.

In view of the facts and submissions stated hereinabove, it is most respectfully submitted that this Hon'ble Tribunal may be pleased to allow the present Appeal.

In view of the facts and submissions stated hereinabove, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to allow the present Appeal and thus render Justice.


Solemnly affirmed on this the  
19th day of February, 2025, and  
Signed his name in my presence



BEFORE ME

ADVOCATE: DELHI



**ATTESTED**  
  
**NOTARY PUBLIC**  
**GOVT. OF INDIA**  
**20 FEB 2025**

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